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July 13, 1992

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

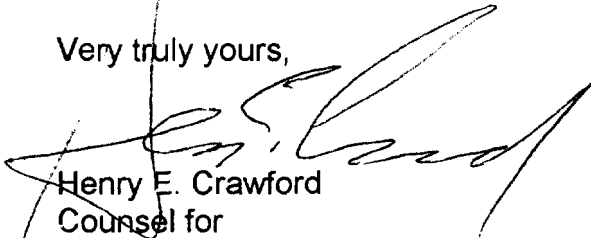
Re: Review of the Commission's Regulations and Policies
Affecting Investment in the Broadcast Industry
MM Docket No. 92-51

Dear Ms. Searcy:

Transmitted herewith on behalf of Minority Broadcast Investment Corporation ("MBIC") are an original and nine (9) copies of MBIC's Reply Comments in the above-captioned proceeding as directed to the Commission.

Should any additional information be required, please contact this office.

Very truly yours,


Henry E. Crawford
Counsel for
Minority Broadcast Investment
Corporation

cc: Mr. Walter L. Threadgill

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before The
Federal Communications Commission
Washington, D.C.

In the Matter of)
)
Review of the Commission's) MM docket No. 92-51
Regulations and Policies)
Affecting Investment)
in the Broadcast Industry)

To: The Commission

**REPLY COMMENTS OF MINORITY BROADCAST INVESTMENT
CORPORATION**

Minority Broadcast Investment Corporation ("MBIC"), by counsel, hereby submits its reply comments in the above-captioned proceeding.

I. INTRODUCTION

1. On June 12, 1992, MBIC filed comments in the above-captioned proceeding. In its comments, MBIC supported the Commission's proposal to allow MESBICs to participate in broadcast ventures up to the newly proposed benchmark of 20% without being charged with having an attributable interest. Additionally, MBIC also asked the Commission to reexamine two comparative hearing doctrines which, as a practical matter, discourage minority investment.¹

2. A review of the comments filed in this proceeding shows general agreement that the Commission should adopt a passive, institutional status for MESBICs in order to encourage investment in minority owned broadcast ventures. Additionally, other measures were advanced by commenters to achieve that goal. MBIC is in agreement and supports those commenters.

¹ Comments of Minority Broadcast Investment Corporation ("Comments"), pp 3-6 ("sham application" and "accommodation letter" doctrines inappropriately used by competitors against legitimate, SBA regulated, minority oriented broadcast investment groups).

However, subsequent to the filing of comments, the Review Board issued a decision in a case mentioned by MBIC in its comments² which could undermine any serious attempt to stimulate minority investment in new broadcast ventures.³ Accordingly, MBIC will now update its Comments to address that Review Board decision.⁴

II. ARGUMENT

3. Salt City Communications shows the difficulties involved in providing needed capital for minority broadcast ventures. In Salt City, the Review Board disqualified a broadcast applicant for relying on a MESBIC financial commitment which was based on the customary practice of syndicating a loan along with other MESBICs in order to provide funds over the legal spending limit. In its holding, the Review Board rejected the business judgment of the president of the MESBIC, even though it was undisputed that he had long experience in providing such financing and had already identified two other MESBICs as co-participants.⁵ From the standpoint of the concurring members of the Review Board, the experience and business judgment of the MESBIC amounted to nothing more than *ipse dixit*.⁶

4. If minority investment is to be encouraged by the Commission, safeguards must be put in place to prevent competing applicants from using MESBIC financing itself as a point of attack. The Salt City Review Board cited no record evidence of a single failure of a MESBIC to successfully syndicate a

² Comments, p. 4, n. 8.

³ Salt City Communications, Inc., FCC 92-R-49, released July 7, 1992, *Chairman Marino dissenting*.

⁴ Although not a party to the Salt City proceeding, MBIC was the MESBIC involved in that case. It is not MBIC's intention to address the merits of Salt City in any substantive way. MBIC submits that Salt City illustrates several aspects of minority financing that can shed considerable light on the decision making process in this docket.

⁵ Salt City Communications, *supra*, p. 6., ¶ 23; p. 7, ¶ 26.

⁶ Salt City Communications, *supra*, p. 6., ¶ 25.

loan to construct a new broadcast facility. While it was concerned with the amount of money that would have to be syndicated (\$300,000.00), all it could say was that it was a "considerable sum." The Board did not offer any substantial reason why that amount could not be syndicated in accordance with the practical, business experience of the MESBIC. Finally, Salt City seems to require that the actual syndication of the loan take place at the time of the financial certification. However, there was no evidence that such a procedure is practical or feasible.⁷

5. It was not disputed in Salt City that "...it is a routine practice for MESBICs to participate in this type of financing."⁸ Nevertheless, that did not stop competing applicants from engaging in protracted and largely speculative litigation simply because the minority applicant did not possess a "lofty"⁹ balance sheet, but relied on MESBIC financing instead. Any steps taken by the Commission here to stimulate minority investment in broadcast ventures should reflect the great potential for legal mischief and speculation inherent in multi-party comparative hearings. Therefore, the safeguards presented by MBIC in its Comments should be adopted by the Commission.

III. CONCLUSION

6. The minority applicant coming before the Commission has to tread through a veritable minefield of legal pitfalls in the comparative hearing process. If that applicant does not have the ready cash to prosecute an application, but has to proceed, instead, with a group of passive investors for financing, it will

⁷ To appreciate this point, consider the fact that the Salt City applications were filed nearly 5 years ago. It is neither wise nor sound policy to require several MESBICs to make commitments involving circumstances some 5 or more years in the future. The commitment of the lead MESBIC to syndicate the loan at the time of grant should be sufficient. Especially where there is no evidence that such a financing practice has failed in the past.

⁸ Salt City Communications, supra, p. 4, ¶ 14.

⁹ Salt City Communications, supra, p. 2, ¶ 6.

most surely be called a "sham" and forced to undergo the most tedious litigation at the hands of applicants who are immune from that process simply by virtue of their own "lofty" balance sheets. If the applicant turns to MESBIC financing, under current law, it can expect the same treatment as that seen in Salt City. MBIC submits that it is these practical realities that discourage investment in minority broadcast applicants.

7. The unfortunate irony of Salt City is that the applicant was far from a "sham" in any traditional sense. The voting shareholder, put together a 42 page business plan and submitted it to the MESBIC some 6 weeks prior to filing the application.¹⁰ Both the proposal and the applicant's voting shareholder were investigated in detail prior to issuing the commitment letter. Id., ¶ 7. Minority applicants, going forward on a serious basis, with the sound financing of a SBA regulated MESBIC, should be spared having to go to such lengths to defend that method of financing.

WHEREFORE, Minority Broadcast Investment Corporation respectfully requests that its proposals made in its Comments be granted.

July 13, 1992

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Respectfully Submitted,

Minority Broadcast Investment
Corporation

By:


Henry E. Crawford

Its Attorney

¹⁰ Id.

CERTIFICATE OF SERVICE

I, Deborah C. Silverstein, do hereby certify that copies of the foregoing Reply Comments of Minority Broadcast Investment Corporation have been served by United States mail, postage prepaid this 13th day of July, 1992 upon the following:


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